

(S E R V E D)
(APRIL 8, 1996)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

April 8, 1996

DOCKET NO. 94-09

**BILL SHERWOOD; CORPORATE WORLD INTERNATIONAL, INC.,
AND CORPORATE WORLD RELOCATION INTERNATIONAL, INC.**

ORDER APPROVING SETTLEMENT

Respondents, Bill Sherwood, Corporate World International, Inc. ("CWI"), and Corporate World Relocation International, Inc. ("CWR"), and the Bureau of Enforcement¹ have submitted a joint memorandum in support of a proposed settlement of this proceeding. The parties to this proceeding believe that the proposed settlement meets the Federal Maritime Commission's ("Commission") criteria for approval of agreements resolving administrative enforcement claims and, therefore, should be approved.

¹Effective October 20, 1995, the Bureaus of Hearing Counsel and Investigations were combined to form the Bureau of Enforcement.

By Order of Investigation dated April 12, 1994, the Commission instituted this proceeding to determine if the respondents performed services as an ocean freight forwarder without a license issued by the Commission, acted in the capacity of a non-vessel-operating common carrier ("NVOCC") without filing a tariff with the Commission, and acted in the capacity of an NVOCC without filing an NVOCC bond with the Commission.

The Bureau of Enforcement asserts that respondents performed services as an NVOCC prior to filing a tariff or NVOCC bond with the Commission in violation of sections 8(a)(1) and 23(a) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. §§ 1707(a)(1) and 1721, or in the alternative, respondents performed forwarding functions without a license issued by the Commission in violation of section 19(a) of the 1984 Act, 46 U.S.C. app. § 1718(a). Respondents assert that all their activities were conducted in good faith without knowledge of any wrongdoing and were lawful under the 1984 Act.

However, recognizing the extensive costs inherent in litigating this matter and the fact that the outcome of any litigation is uncertain the parties agreed to enter into a Stipulation of Facts and a Proposed Settlement.

Discussion and Conclusions

The Administrative Procedure Act ("APA"), 5 U.S.C. 554(c)(1), requires agencies to give interested parties an opportunity, *inter alia*, to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit." As the legislative history of the APA makes clear, Congress intended this particular provision to be read broadly so as to encourage the use of settlement in proceedings such as the present one.

Courts have endorsed the use of the APA settlement provision "to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own which the appropriate agency finds compatible with the public interest." *Pennsylvania Gas & Water Co. v. Federal Power Comm'n*, 463 F.2d 1242, 1247 (D.C. Cir. 1972).

The Commission itself has long recognized that the law strongly favors settlements and in accordance with Rule 91, 46 CFR 502.91, the Commission has approved numerous settlements of administrative and investigative proceedings.

The Commission's regulations reflect its policy of encouraging settlements. 46 CFR 502.91 and 502.603(a). They also recognize the designated role of the Bureau of Enforcement in formal proceedings and, necessarily, in the settlement of those proceedings. 46 CFR 502.42. The regulations also require that approval be obtained of all such settlement agreements in formal proceedings. 46 CFR 502.603(a).

The appropriate standards for approving proposed settlements in assessment proceedings were summarized in *Far Eastern Shipping Co. ("FESCO")*, 21 SRR 743, 764 (I.D. administratively final May 7, 1982), as follows:

[S]ettlement may be based upon a determination that the agency's "enforcement policy in terms of deterrence and securing compliance, both present and future, will be adequately served by acceptance of the sum to be agreed upon"; [footnote omitted] that "the amount accepted in compromise . . . may reflect an appropriate discount for the administrative and litigative costs of collection having regard for the time it will take to effect collection"; [footnote omitted] the value of settling claims on the basis of pragmatic litigative probabilities, i.e., the ability to prove a case for the full amount claimed either because of legal issues involved or a bona fide dispute as to facts; [footnote omitted] and that penalties may be settled "for one or for more than one of the reasons authorized in this part." [Footnote omitted.]

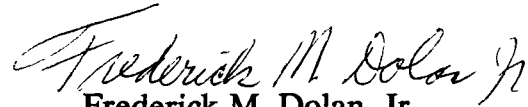
With respect to the Commission's enforcement policy, respondent CWR has become an NVOCC and filed an NVOCC bond with the Commission. Since May 6, 1993, CWR either has maintained its own NVOCC tariff or been a participating member of the Household Goods Forwarders Association of American, Inc. ("HGFA") NVOCC tariff. Also, the other respondent CWI is no longer engaged in any business. These facts demonstrate a willingness to comply with the Commission's enforcement policy.

With respect to the litigative probabilities and potential costs of continuing with the proceeding, a determination would have to be made in regard to the legal status of the respondents' activities under the 1984 Act. The Bureau of Enforcement believes that the respondents acted in the capacity of an NVOCC or that they were performing freight forwarding functions without a license issued by the Commission. Respondents, however, assert that all their activities were conducted in good faith without any knowledge of wrongdoing and were lawful under the 1984 Act. There are, thus, bona fide disagreements between the respondents and the Bureau of Enforcement.

Although each party is confident that its legal position would prevail, the outcome of any litigation is uncertain. The continuation of this dispute would impose additional time and expense burdens on all parties and would serve little purpose as respondent CWR is in compliance with the regulatory demands having become an NVOCC, filed an NVOCC bond, and operates pursuant to rates in an NVOCC tariff. The proposed settlement agreement clearly meets the Commission's previously quoted criteria for approval of agreements settling administrative enforcement claims and, therefore, will be approved.

IT IS ORDERED:

The attached proposed settlement agreement is approved and the proceeding is discontinued.

A handwritten signature in cursive script, reading "Frederick M. Dolan, Jr.", written in black ink.

**Frederick M. Dolan, Jr.
Administrative Law Judges**

ATTACHMENT

FEDERAL MARITIME COMMISSION

RECEIVED

DOCKET NO. 94-09

'96 MAR 26

BILL SHERWOOD; CORPORATE WORLD INTERNATIONAL, INC.,
AND CORPORATE WORLD RELOCATION INTERNATIONAL, INC.

PROPOSED SETTLEMENT JOINTLY SUBMITTED
BY RESPONDENTS AND BUREAU OF ENFORCEMENT

RECEIVED
'96 MAR 28 4:50 PM
FED MARITIME COMMISSION
OFFICE OF THE
ADMINISTRATIVE

WHEREAS, by Order of Investigation dated April 12, 1994, the Federal Maritime Commission ("Commission") commenced an investigation to determine whether Bill Sherwood, Corporate World International, Inc., and Corporate World Relocation International, Inc., Respondents, violated sections 19(a), 8(a)(1), and 23(a) of the Shipping Act of 1984 ("Act"), 46 U.S.C. app. §§ 1718(a), 1707(a)(1) and 1720, by acting as an ocean freight forwarder without a license issued by the Commission, by acting in the capacity of a non-vessel-operating common carrier ("NVOCC") without filing tariffs with the Commission showing all its rates, charges, classifications, rules, and practices between all transportation points or ports, and by failing to file an NVOCC bond with the Commission.

WHEREAS, the Bureau of Enforcement avers that in a hearing it would establish that Respondents operated in the capacity of a

¹Formerly Bureau of Hearing Counsel.

NVOCC in violation of sections 8(a)(1) and 23(a) of the Act and/or in the capacity of an ocean freight forwarder without a license issued by the Commission in violation of section 19(a) of the Act;

WHEREAS, Respondents believe and assert they would establish that their actions were conducted in good faith without knowledge of any wrongdoing and were lawful under the Act;

WHEREAS, the parties believe that continued litigation in this matter will be protracted and wish to minimize the time and expense of this proceeding;

WHEREAS, to settle the issues raised by the Order of Investigation, Respondents hereby tender a settlement to the Federal Maritime Commission;

NOW THEREFORE, Respondents and the Bureau of Enforcement propose the following settlement:

1. That Respondents pay to the Commission, without admission of violation of law, the sum of \$5,000, a check for said payment is attached to this Proposed Settlement with the understanding that the payment will be returned to Respondents if this settlement is not approved by the Commission;
2. That upon final approval of this Proposed Settlement, any investigation, assessment proceeding, civil action, demand for payment of civil penalties or any other relief or punitive actions undertaken by the Commission arising from alleged violations set forth in the Order

of Investigation forever shall be barred as to
Respondents; and

3. That the factual and legal bases for this Proposed Settlement will be set forth in a Stipulation of Facts and Joint Memorandum in Support of the Proposed Settlement, submitted for purposes of this settlement only, by Respondents and the Bureau of Enforcement.

Dated this day of March, 1996.



David P. Street
Counsel for Respondents



Vern W. Hill, Director
Bureau of Enforcement

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record to this proceeding by mailing via first-class mail, postage prepaid, a copy to each such party.

Dated at Washington, DC this 28th day of March, 1996.

Joseph B. Slunt
Joseph B. Slunt